IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

RSA.No. 489 of 2007()

AS.25/2003 of SUB COURT, KASARAGOD
OS.265/2001 .MUNSIFF'S COURT, KASARAGOD

.....

: APPELLANT/APPELLANT/PLAINTIFF

K.SUBRAHMANYA BHAT, AGED 48 YEARS,
S/O.ANANTHA BHATTA, RESIDING AT MUNDEPALLA,
MULIYAR VILLAGE, KASARAGOD TALUK, P.O.MALLA.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS: RESPONDENT/DEFENDANT

PERUNTHATTA NARAYANI AMMA, AGED 70 YEARS
W/O V.R.NARAYANAN NAIR, CHAROLI, MUNDEPALLA,
MULIYAR VILLAGE, KASARAGOD TALUK, P.O.MALLA.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

==========

R.S.A. NO. 489 OF 2007

==========

Dated this the 2nd day of July, 2007

JUDGMENT

Plaintiff in O.S.265/2001 on the file of Munsiff Court, Kasaragod is the appellant. Defendant is the respondent. Appellant instituted the suit seeking a decree for declaration that he is the absolute owner of the plaint schedule property and Ext.B5 sale deed dated 3.6.1995 is null and void. Case of the appellant was that plaint schedule property and other properties were originally in the possession of Krishna Bhat and Krishna Bhat and his children partitioned the property under Ext.A2 partition deed on 17.11.1965 and plaint schedule property along with other properties was allotted to Sankaranarayana Bhat and Sankaranarayana Bhat transferred the property in favour of Venkitakrishna Ganaraja, Keshava, Shivakumara, Udaneswara and Manjunatha to Venkitakrishna and others in 1976 as per document

No.649/1976 and thereafter Venkitakrishna sold plaint A schedule property to the appellant under Ext.A8 sale deed dated 11.9.1978 and appellant is thus the absolute owner in possession of the plaint A schedule property and respondent has no manner of right over the road which is a private road which absolutely belong to the appellant and respondent or Venkitakrishna has no title or possession of the property. It was alleged that as per Ext.B5 it is seen that property was purchased from B.M.Abdulla and four others as per document dated 3.6.1995 and Abdulla got the property from Moosa as per sale deed dated 13.7.1987 and Moosa had no right over the property and respondent did not derive any right over the plaint A schedule property under the said document and therefore appellant is entitled to the declaration that he is the absolute owner of the plaint A schedule

property and Ext.B5 is null and void. Respondent filed a written statement denying the right claimed by the appellant. It was contended that plaint A schedule property was never in the possession of Venkitakrishna and appellant did not derive any title or possession of the property under Ext.A8 sale deed and Ext.A8 is not binding on the plaint schedule property or respondent and the property was purchased by him from Abdulla and others as per sale deed dated 3.6.1985 and the vendor Abdulla purchased it from Moosa as per document dated 13.3.1987 and appellant is not entitled to the decree sought for.

2. Learned Munsiff on the evidence of Pws.1 and 2, DW1 and Exts.A1 to A8 and B1 to B8 found that appellant did not establish his title. It was found that Ext.A8 under which appellant had claimed title to the property, was registered in

Sub Registrar's office, Badiadka when plaint A schedule falls within the jurisdiction of Sub Registrar Office, Kasaragod. Though it was contended that jurisdiction over the plaint A schedule property was originally with Badiadka Sub Registrar's office, no evidence was adduced in support of the claim. Relying on the decision of the High Court of Nagpur (A.I.R. 1946 337) it was held that appellant did not derive any title under Ext.A1. Learned Munsiff on appreciation of evidence found that when examined as PW1, appellant admitted that he sold the property in 2002 to one Madhavan Nair. On the evidence it was found that appellant did not establish the title and therefore he is not entitled to the decree sought for. Appellant challenged the decree and judgment before Sub Court, Kasaragod in A.S.25/2003. Learned Sub Judge on reappreciation of evidence found that appellant

did not establish the title and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for appellant was heard.

4. The argument of learned counsel appearing for appellant is that Ext.A5 encumbrance certificate shows the details of the previous transfer in respect of the property and therefore it establishes that the property was originally within the jurisdiction of Badiadka Sub Registrar's office and therefore finding of the courts below that Ext.A8 is not valid is not sustainable. Learned counsel also argued that the right obtained by respondent is from Moosa who claim that the property transferred thereunder is a Government land and there is no evidence to prove that it is a Government land and even if it is a Government land Moosa could not have any right to tranfer the

property in favour of Abdulla and so respondent is not entitled to claim title to the property. It was further contended that Ext.A2 partition deed the property divided thereunder originally belonged to Krishna Bhat which devolved on Sankaranarayana Bhat and were divided and thereafter the property was purchased by the appellant and courts below should have upheld the title of the appellant finding that respondent has no title under Ext.B5.

5. On hearing learned counsel for appellant, I do not find any substantial question of law involved in the appeal.

6. Appellant is setting up title to the plaint schedule property under Ext.A8 sale deed. Respondent contended that the property covered under Ext.A8 does not fall under Badiadka Sub Registrar's Office and but within the jurisdiction

of Sub Registrar's Office, Kasaragod and hence under Ext.A8 appellant did not derive any right on the document is invalid. It was accepted by courts below. The argument of learned counsel is that Ext.A5 establish that the property was originally within the jurisdiction of Badiadka Sub Registrar's Office and it was subsequently transferred to Sub Registrar's office, Kasaragod. The trial court and the first appellate court considered this aspect and found that absolutely no evidence was adduced to prove that transfer and if the case of the appellant that the property was origingally included within the jurisdiction of Sub Registrar's office, Badiadka and was subsequently transferred to Sub Registrar's Office kasaragod, the order transferring the jurisdiction could have been produced. For the failure to prove that aspect the case of the respondent that Badiadka

Sub Registrar's office has no jurisdiction to register a document in respect of properties falling under Sub Registrar's office, Kasaragod was upheld. I do not find any reason to interfere with that finding of fact, in the absence of any other acceptable evidence, which could have been adduced by the appellant.

7. When the appellant is setting up title and seeking a decree for declaration of the title he is not entitled to a decree either on the weakness of the respondent's case or on the failure of the respondent to establish her title. Appellant has to establish the title. Courts below on the evidence found that appellant has no title. Even if Ext.A8 is valid, unless the title of the assignor of Ext.A8 is established by producing the previous basic title deeds, the title cannot be upheld. Learned Munsiff and learned Sub Judge on

appreciation of evidence held that appellant did not establish the same. That factual finding cannot be interfered . As no substantial question of law is involved in the appeal, appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006